

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

EUGENE V. SEYMOUR, TRUSTEE,)	
EUGENE V. SEYMOUR TRUST OF 2007,)	
)	Case No. 09R 094
Appellant,)	
)	DECISION AND ORDER
v.)	AFFIRMING THE DECISION OF
)	THE DOUGLAS COUNTY BOARD OF
DOUGLAS COUNTY BOARD OF)	EQUALIZATION
EQUALIZATION,)	
)	
Appellee.)	

The above-captioned case was called for a hearing on the merits of an appeal by Eugene V. Seymour, Trustee, Eugene V. Seymour Trust of 2007 ("the Taxpayer") to the Tax Equalization and Review Commission ("the Commission"). The hearing was held in the Commission's Hearing Room on the sixth floor of the Nebraska State Office Building in the City of Lincoln, Lancaster County, Nebraska, on July 29, 2010, pursuant to an Order for Hearing and Notice of Hearing issued May 25, 2010. Commissioner Warnes, Vice-Chairperson of the Commission, was the presiding hearing officer. Commissioner Wickersham, Chairperson of the Commission, was absent. Commissioner Warnes, as Vice-Chairperson acting in the absence of the Chairperson, designated Commissioners Warnes, Salmon, and Hotz as a panel of the Commission to hear the appeal. Commissioner Hotz was excused. Commissioner Salmon was present. The appeal was heard by a quorum of a panel of the Commission.

Eugene V. Seymour, Trustee of Eugene V. Seymour Trust of 2007, was present at the hearing. No one appeared as legal counsel for the Taxpayer.

Thomas S. Barrett, a Deputy County Attorney for Douglas County, Nebraska, was present as legal counsel for the Douglas County Board of Equalization ("the County Board").

The Commission took statutory notice, received exhibits, and heard testimony.

The Commission is required to state its final decision and order concerning an appeal, with findings of fact and conclusions of law, on the record or in writing. Neb. Rev. Stat. §77-5018 (Reissue 2009). The final decision and order of the Commission in this case is as follows.

I. ISSUES

The Taxpayer has asserted that actual value of the subject property as of January 1, 2009, is less than actual value as determined by the County Board. The issues on appeal related to that assertion are:

Whether the decision of the County Board determining actual value of the subject property is unreasonable or arbitrary; and

The actual value of the subject property on January 1, 2009.

II. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer has a sufficient interest in the outcome of the above-captioned appeal to maintain the appeal.
2. The parcel of real property to which this appeal pertains ("the Subject Property") is described in the table below.
3. Actual value of the subject property placed on the assessment roll as of January 1, 2009, ("the assessment date") by the Douglas County Assessor, value as proposed in a timely

protest, and actual value as determined by the County Board is shown in the following table:

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Description: SOUTH OMAHA CITY LOTS LOT 4 BLOCK 63 S 20 FT N 40 FT 20 X 150, Douglas County, Nebraska.

	Assessor Notice Value	Taxpayer Protest Value	Board Determined Value
Land	\$5,300.00	\$6,800.00	\$5,300.00
Improvement	\$91,500.00	\$40,300.00	\$69,700.00
Total	\$96,800.00	\$47,300.00	\$75,000.00

4. An appeal of the County Board's decision was filed with the Commission.
5. An Order for Hearing and Notice of Hearing issued on May 25, 2010, set a hearing of the appeal for July 29, 2010, at 3:00 p.m. CDST.
6. An Affidavit of Service, which appears in the records of the Commission, establishes that a copy of the Order for Hearing and Notice of Hearing was served on all parties.
7. Actual value of the subject property as of the assessment date for the tax year 2009 is:

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Land value \$5,300.00
Improvement value \$69,700.00
Total value \$75,000.00.

**III.
APPLICABLE LAW**

1. Subject matter jurisdiction of the Commission in this appeal is over all questions necessary to determine taxable value. Neb. Rev. Stat. §77-5016(7) (Reissue 2009).
2. “Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.” Neb. Rev. Stat. §77-112 (Reissue 2009).
3. “Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.” Neb. Rev. Stat. §77-112 (Reissue 2009).
4. “Actual value, market value, and fair market value mean exactly the same thing.” *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).
5. Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value. Neb. Rev. Stat. §77-131 (Reissue 2009).

6. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation. Neb. Rev. Stat. §77-201(1) (Reissue 2009).
7. A presumption exists that the County Board has faithfully performed its duties and has acted on competent evidence. *City of York v. York County Bd. Of Equalization*, 266 Neb. 297, 64 N.W.2d 445 (2003).
8. The presumption in favor of the county board may be classified as a principle of procedure involving the burden of proof, namely, a taxpayer has the burden to prove that action by a board of equalization fixing or determining valuation of real estate for tax purposes is unauthorized by or contrary to constitutional or statutory provisions governing taxation. *Gordman Properties Company v. Board of Equalization of Hall County*, 225 Neb. 169, 403 N.W.2d 366 (1987).
9. The presumption disappears if there is competent evidence to the contrary. *Id.*
10. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary. Neb. Rev. Stat. §77-5016 (8) (Reissue 2009).
11. Proof that the order, decision, determination, or action appealed from was unreasonable or arbitrary must be made by clear and convincing evidence. See, e.g., *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb.App. 171, 645 N.W.2d 821 (2002).
12. "Clear and convincing evidence means and is that amount of evidence which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Castellano v. Bitkower*, 216 Neb. 806, 812, 346 N.W.2d 249, 253 (1984).

13. A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736 (2000).
14. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb 390, 603 N.W.2d 447 (1999).
15. "An owner who is familiar with his property and knows its worth is permitted to testify as to its value." *U. S. Ecology v. Boyd County Bd. Of Equalization*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).
16. The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).
17. A Taxpayer, who only produced evidence that was aimed at discrediting valuation methods utilized by the county assessor, failed to meet burden of proving that value of property was not fairly and proportionately equalized or that valuation placed upon property for tax purposes was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).
18. A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued. Cf. *Lincoln Tel. and Tel. Co. v. County Bd. of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515, (1981); *Arenson v. Cedar County*, 212 Neb. 62, 321 N.W.2d 427 (1982) (determination

of equalized taxable value); *Josten-Wilbert Vault Co. Board of Equalization of Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value).

IV. ANALYSIS

The subject property has been classified by the County Assessor as a Duplex Two Story home. (E2:2). The house is rated average for both quality and condition. (E2:4).

The Taxpayer testified that he inherited the subject property from his parents who used the property for a business. He further testified that he lives on the second floor of the subject property, but has remodeled the lower level as an apartment. The only windows in the subject property are on the second floor.

The Taxpayer testified that his principal reason for alleging the actual value for the subject property for 2009 is too high are the negative locational factors. The first of these locational factors is the "exhaust" from an adjacent auto body shop, and both a Mexican and Thai restaurant. Photos provided by the Taxpayer show the exhaust fan for the body shop, the Thai restaurant, and the Mexican restaurant. (E5:3, E3:4 and E5:5). The Taxpayer pointed out in his testimony that the smells emanating from the exhaust fans for the three entities were especially aggravating since the exhausts are near the windows of the subject property. The Taxpayer did not provide to the Commission a quantification of the locational factors to which he testified. The Commission is sensitive to the potential negative impact that the smells can cause, but without evidence of damage the Commission is unable to quantify the effect this can have.

The Taxpayer testified that there are several items that need repair, one of which is the roof of the subject property. He provided photos of the roof, as well as photographic evidence of

water damage due to the defective roof. (E5:6-8 and E5:9-10). An additional negative factor to the condition of the subject property was the "underground storage" and sidewalk as shown in photos provided by the Taxpayer. (E5:11, E5:12-13). Other items needing repair include past termite damage, brick deterioration, and the updating of electrical circuitry. (E5:14 to E5:19). Proposals for the repair of the above deficient items to the condition of the subject property were provided by the Taxpayer. (E5:28-32).

Other negative factors with the subject property include the narrow design of the improvement, 15 feet x 80 feet, and the limited parking. (E5:20 and E5:21).

The Commission notes that the referee in his review of the subject property for the County Board of Equalization noted the negative conditions of the subject property in making his recommendation to reduce the actual value of the subject property for 2009 from \$96,000 to \$75,000. (3:2).

The Taxpayer did not provide sales of comparable parcels to the subject property nor did he provide complete information for a determination of actual value based on the income approach to valuation. He testified that he had not received any income from the subject property since 2004. The Taxpayer did not provide his actual expenses nor the market expenses of comparable parcels.

The Commission does not find merit to the other allegations testified to by the Taxpayer. A taxpayer who offers no evidence that the subject property is valued in excess of its actual value and who only produces evidence that is aimed at discrediting the valuation methods utilized by county assessor fails to meet his or her burden of proving that the value of the property was not fairly and proportionately equalized or that valuation placed upon the property for tax purposes

was unreasonable or arbitrary. *Beynon v. Board of Equalization of Lancaster County*, 213 Neb. 488, 329 N.W.2d 857 (1983).

“There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. The presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board. In an appeal to the county board of equalization or to the district court, and from the district court to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment.” *Id.* Taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued. *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

The Commission finds that the Taxpayer has not provided competent evidence to rebut the presumption that the County Board faithfully performed its duties and did have sufficient competent evidence to make its determination.

The Commission finds that the Taxpayer has not provided clear and convincing evidence that the County Board's decision was arbitrary or unreasonable. The appeal of the Taxpayer is denied.

**V.
CONCLUSIONS OF LAW**

1. The Commission has subject matter jurisdiction in this appeal.
2. The Commission has jurisdiction over the parties to this appeal.
3. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its official duties and to act on sufficient competent evidence to justify its actions.
4. The Taxpayer has not adduced sufficient, clear and convincing evidence that the decision of the County Board is unreasonable or arbitrary and the decision of the County Board should be affirmed.

**VI.
ORDER**

IT IS ORDERED THAT:

1. The decision of the County Board determining actual value of the subject property as of the assessment date, January 1, 2009, is affirmed.
2. Actual value, for the tax year 2009, of the subject property is:

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Land value	\$5,300.00
Improvement value	<u>\$69,700.00</u>
Total value	<u>\$75,000.00.</u>

3. This decision, if no appeal is timely filed, shall be certified to the Douglas County Treasurer, and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (Reissue 2009).
4. Any request for relief, by any party, which is not specifically provided for by this order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This decision shall only be applicable to tax year 2009.
7. This order is effective for purposes of appeal on September 15, 2010.

Signed and Sealed. September 15, 2010.

Nancy J. Salmon, Commissioner

William C. Warnes, Commissioner

SEAL

APPEALS FROM DECISIONS OF THE COMMISSION MUST SATISFY THE REQUIREMENTS OF NEB. REV. STAT. §77-5019 (REISSUE 2009), OTHER PROVISIONS OF NEBRASKA STATUTES, AND COURT RULES.